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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR DUCHESNE COUNTY, STATE OF UTAH

IN THE MATTER OF THE GENERAL )  
DETERMINATION OF THE RIGHTS )  
TO THE USE OF ALL THE WATER, )  
BOTH SURFACE AND UNDERGROUND, )  
WITHIN THE DRAINAGE AREA OF )  
THE UINTAH BASIN. )

STATEMENT OF  
POINTS AND  
AUTHORITIES

Civil No. 3070

POINT I

THE UNITED STATES IS A PARTY TO THIS SUIT  
AND IS SUBJECT TO THE JURISDICTION  
OF THE STATE COURT

THE UNITED STATES OF AMERICA is a party to this  
statutory proceeding for the determination of water rights.  
It has filed many water users' claims, including Claim No.  
1239 covering the appropriation of water for conveyance  
through the Duchesne Feeder Canal for storage in Midview  
Reservoir, an essential part of the Midview Exchange.

It was held in the case of In re Green River  
Drainage Area (1956) 147 F. Supp. 127, that the United States  
was subject to the jurisdiction of the State District Court  
and that such court had jurisdiction of the subject matter of  
the suit. It will be noted that this decision long preceded  
the important decisions of the United States Supreme Court in  
the case of United States v. District Court in and for the  
County of Eagle, (1971), 401 U. S. 520, 28 L Ed 2d, 278, and  
Colorado River Water Conservation District v. United States,  
1976) 424 U.S. 800, 47 L Ed 2d, 483. These cases held that  
the United States, by the McCarron Act, 43 USCA Sec 666, had  
consented to be sued in suits for the general adjudication of  
water rights, and that the United States could be sued in the  
State courts. The latter case held that Indian Reserve water  
rights could be determined in the state courts subject to re-

view under certain circumstances by the Supreme Court of the United States.

## POINT II

### THE UNITED STATES, AS A PARTY, MUST ASSERT ALL OF ITS CLAIMS TO UINTAH BASIN WATER

If, as positively determined by the above cited cases, the United States is a party subject to the jurisdiction of this court, it is bound, like any other water user, to make statements of all of its claims to Uintah Basin water. It necessarily follows that the United States is subject to the provisions of Chapter 4, Title 73, UCA 1953, like any other water user.

Section 73-4-5 requires each person to file in the office of the clerk of the district court a statement of its claims. It provides:

Statements by Claimants. Each person claiming a right to use any water of such river system or water source shall, within ninety days after the completed service of the notice of completion of survey prescribed by section 73-4-3 hereof, file in the office of the clerk of the district court a statement in writing which shall be signed and verified by the oath of the claimant, and shall include as near as may be the following. The name and post office address of the person making the claim; the nature of the use on which the claim of appropriation is based; the flow of water used in cubic feet per second or the quantity of water stored in acre-feet, and the time during which it has been used each year; the name of the stream or other source from which the water is diverted, the point on such stream or source where the water is diverted, and the nature of the diverting works; the date when the first work for diverting the water was begun, and the nature of such work; the date when the water was first used, the flow in cubic feet per second or the quantity of water stored in acre-feet, and the time during which the water was used the first year; and the place and manner of present use; and such other facts as will clearly define the extent and nature of the appropriation claimed, or as may be required by the blank form which shall be furnished by the state engineer under the direction of the court.

Section 73-4-9 provides that the failure to file claims shall result in forfeiture of water rights. It provides in part as follows:

Relief. "The filing of each statement by a claimant shall be considered notice to all persons of the claim of the party making the same, and any person failing to make and deliver such statement

of claim to the clerk of the court within the time prescribed by law shall be forever barred and estopped from subsequently asserting any rights, and shall be held to have forfeited all rights to the use of the water theretofore claimed by him...."

The abstract of water rights attached to the affidavits indicates on the left side the numbers of the water users claim filed in this suit. This shows numerous rights claimed by the United States acting by and through the Bureau of Indian Affairs for which no water users' claim numbers in this suit are indicated. It is apparent from an examination of the file in this case that the United States has deliberately refrained from filing claims because its attorneys and officers did not, prior to the Supreme Court decisions above cited, believe that it could be sued in a state court for determination of (1) reserved water rights and (2) Indian water rights.

### POINT III

#### IT IS THE PURPOSE AND INTENT OF THE STATUTE TO TO PROVIDE FOR THE DETERMINATION OF ALL WATER RIGHTS IN THE SOURCE

It is apparent that Chapter 4 of Title 73, UCA, is intended to set up a procedure for the determination of all water rights in a water source.

The following is quoted from In re Bear River Drainage Area, (1954), Utah 2d 208, 271 P 2d 846.

"The purpose of the statutory procedure, Ch. 4, Title 73, U.C.A. 1953, for the determination of water rights is to prevent piecemeal litigation or a multiplicity of suits and to provide a means of determining all rights in one action. Once the determination has commenced the statute provides that notice shall be sent to all water claimants known to the State Engineer, that they shall be served with summons, that all other parties shall be served by publication of summons, that they all shall file water claims within a stated period, the claims themselves standing in the place of pleadings. The statute further provides: "Any person failing to make and deliver such statement of claim to the clerk of the court within the time prescribed by law shall be forever barred and estopped from subsequently asserting any right and shall be held to have forfeited all rights to the use of the water theretofore claimed by him."

See also, Smith v. District Court, (1927, 69 Utah 493, 256 P. 539.

POINT IV

THE UNITED STATES, A TRUSTEE FOR THE INDIANS  
AND THE UTE INDIAN TRIBE ARE BOUND BY THE  
THREE-ACRE FOOT LIMITATION IN THE FEDERAL DECREE  
AND THE STATE ENGINEERS CERTIFICATES

The affidavit attached to the motion for an order requiring the United States and the Ute Indian Tribe to file claims with the clerk of the above-entitled Court as required by Section 73-4-5, shows that the Midview Exchange provides for the diversion of Duchesne River water for storage in Midview Reservoir. This water so stored is released to satisfy Lake Fork decreed rights which, by the Federal court decree, are limited to three-acre-feet per acre. As indicated in the affidavit, if the three-acre-feet per acre limitation is disregarded and more water is diverted in violation of the decree, it will be disastrous to the moving parties whose water rights are subordinate to those of the United States for the benefit of the Indians.

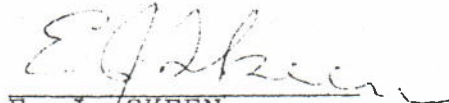
CONCLUSION

The United States is a party to this statutory adjudication of Uintah Basin drainage water rights and is subject to the state law as to procedure just the same as any other water right owner. It, as Trustee for the Indians, must file its claims or be subject to the forfeiture provisions of Section 73-4-5 the same as any other water user. An examination of the tabulation of water rights clearly shows that no claims have been filed by the United States acting by and through the Bureau of Indian Affairs.

DATED this 6th day of April, 1981.

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By:

  
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